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### Deposited in DRO:

20 June 2013

### Version of attached file:

Published Version

### Peer-review status of attached file:

Peer-reviewed

### Citation for published item:

Beyleveld, Deryck (1999) 'Does PID solve the moral problems of prenatal diagnosis? A rights analysis.', in Genetics in human reproduction. Aldershot: Ashgate, pp. 135-140.

### Further information on publisher's website:

<http://www.ashgate.com>

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# 1 Does PID solve the moral problems of prenatal diagnosis? A rights analysis

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## **Introduction**

Preimplantation diagnosis (PID) and prenatal diagnosis (PD) can both be used to prevent the birth of a child with a genetically inherited condition or defect. When used for such a purpose, the chief moral advantage generally claimed for PID over PD (where PID is possible and practicable) is that PID does not involve terminating a pregnancy.

This will not impress those who believe that a biologically human being has an inviolable 'right' to life from conception, but it does recommend PID to those who believe that the embryo achieves this status only at the moment of implantation. And, even for those who believe that the fetus is owed no protection for its own sake at any stage, it recommends PID on the ground that deliberate abortion should be avoided because of the trauma and risks to the life and health of the mother involved.

Are we to conclude that PID is an ethical advance over PD? We need to be cautious. The permissibility of abortion is not the only moral issue raised by PID or PD. In general, genetic selection in reproductive choice raises the central issue of eugenics, viz., 'What are permissible grounds (if any) on which to select for or against genetic characteristics?'; and against PID there is widespread suspicion that, even if PID is preferable to PD on anti-abortion grounds, PID is more suspect than PD on the issue of eugenics.

Opposition to PID (vs. PD) on the issue of eugenics seems to rest on the conjunction of two claims (or sets of claims):

- I PID will (more than PD) facilitate or even encourage selection for or against genetic characteristics that are irrelevant to the possession of moral status.
- II To select for or against genetic characteristics that are irrelevant to possession of moral status is immoral.

Whether or not Claim I is true is an empirical question, and in this paper I will restrict my attention to Claim II (which is equally relevant to germline gene therapy), and I will try to assess it within the context of the Principle of Generic Consistency (*PGC*).

The *PGC* grants rights explicitly to the generic features of (or capacities for) agency to all agents and prospective purposive agents (PPAs). A conceptus is before birth (and, indeed, for some time thereafter) not a PPA, but at most a potential PPA. The *PGC* does not grant *generic* rights to potential PPAs<sup>1</sup> and it is contentious to suggest that it imposes any duties on PPAs not to harm potential PPAs *just because* they are potential PPAs. The entire matter of duties owed to potential PPAs is complex, and for present purposes I shall just assert that there are at least some cases in which it is morally permissible to prevent the further development of a conceptus (whether already impregnated or not). More specifically, I would argue that there are two unproblematic grounds on which the development of a conceptus may be prevented or ended.

For the reason that the conceptus is incapable of developing into a PPA;

For the reason that the conceptus has known properties that mean that either at the unborn stage or after birth it will compromise the generic capacities for agency of the parents (and especially the mother) against their will.

In addition, presuming that the *PGC* does not grant protection to potential PPAs *as such*, there is scope for arguing that there is third permissible ground for preventing or ending the further development of a conceptus: viz.,

For the reason that the mother (in the case of an implanted conceptus) or the parents (in the case of a not yet implanted conceptus) simply does not wish to have a child.

In the context of the *PGC* (and other theories that make agency the central property for the possession of full moral status, i.e., of rights), II maintains

II' (All things being equal) it is morally impermissible to select for or against PPA irrelevant characteristics (characteristics that are neither necessary nor sufficient for a being to acquire or maintain the status of a PPA).

II', in turn, entails that it is (all things being equal) impermissible to prevent or end the further development of a conceptus.

For no reason other than that the mother (in the case of an implanted conceptus), or the parents (in the case of a not yet implanted conceptus), does not want to have a child with (or lacking) particular characteristics X, i.e., does not want to have a child having characteristics Z – where possession of Z is compatible with a child having the status of a PPA (the



genetic characteristics of the conceptus being such that they will, or are likely to, result in a child with characteristics Z).

### **Is II' a valid derivation from the PGC?**

There are, in principle, two kinds of arguments that can be used to derive II' from the *PGC*.

- A Those that attempt to establish that assent to the *PGC* *logically entails* assent to II'.
- B Those that attempt to establish that selection for or against PPA irrelevant characteristics *tends to facilitate or encourage* *PGC* violating circumstances.

#### *Arguments of type A*

If the *PGC* imposes at least a prima facie duty on PPAs not to kill *potential* PPAs *as such*, then II' will be a valid derivation from the *PGC*. In such a case, PPAs will owe such a duty to a potential PPA simply by virtue of the potential PPA being a potential PPA, because to select against a conceptus simply for the reason that it has (or lacks) characteristics irrelevant to its ability to become a PPA will be to deny that being a potential PPA is sufficient to impose a duty of protection on PPAs.

However, I am not persuaded that the *PGC* grants such prima facie protection to potential PPAs *as such*. If this presumption is correct, then, if II' is to be derived logically from the *PGC*, this form of argument must show that to select for or against PPA irrelevant characteristics is to deny *PGC* protected rights of *full* PPAs *as such*.

How about the following argument? A potential parent who wishes to select against a child having (or lacking) PPA irrelevant characteristics X (i.e., having Z characteristics), in effect claims

- (a) 'I do no wrong by selecting against a conceptus with Z characteristics.'  
Therefore,
- (b) 'My *PGC* protected autonomy is violated if I am compelled to become a parent of a PPA with Z characteristics (when this can be prevented).'  
Therefore,
- (c) 'The mere existence of PPAs with Z characteristics against the choice of their parents (irrespective of how they behave) – whose existence could have been prevented – violates the generic rights of their parents.'<sup>2</sup>  
Therefore,
- (d) 'The mere existence of a PPA can violate the generic rights of another PPA.'



(e) The *PGC*, however, grants equal rights to all PPAs, reciprocal to which it places equal duties on all PPAs. Thereby, it implies that any rights violation can be prevented by the observance of a duty, which (in turn) implies that the mere existence of a PPA cannot be a violation of the generic rights of another PPA.

(f) However, (d) contradicts (e).

(g) Therefore, selection against Z characteristics violates the *PGC*.

How sound is this? If a type A argument can be made out, I believe it will have to proceed along something like these lines. This particular example, however, is invalid. The valid interpretation of '*the mere existence of a PPA cannot be a violation of the generic rights of another PPA*' in (e) is '*a PPA cannot by its mere existence violate the generic rights of another PPA*'. On the other hand, the valid interpretation of '*the mere existence of a PPA cannot be a violation of the generic rights of another PPA*' in (d) is '*PPAs who do not permit PPAs to select against Z characteristics violate the generic rights of those PPAs*'. So interpreted, there is no contradiction between (d) and (e). For there to be a genuine contradiction, it must be read into (d) that it is *those PPAs who have Z characteristics* who are, merely by having Z characteristics, violating the generic rights of their parents. But (d), so interpreted, is not a valid derivation.

And, of course, there is the converse possibility of arguing that the logical entailment strategy *must* fail. For example, the following case might be presented. Are not would be parents, in effect, trying to select for (or against) PPA irrelevant characteristics simply by choosing particular partners to mate with? The only difference between selection by traditional mating choice and selection through PID or PD is the inefficiency of the former. If so, unless we suppose that mating should be at random, it cannot be intrinsically immoral to select for or against PPA irrelevant characteristics.

This, however, is also fallacious. The *effect* of mating partner selection is, indeed, genetic selection for or against various PPA irrelevant traits. But, while mating choices cannot be illegitimate just because they have such an effect (it is, after all, impossible for there not to be such an effect), it begs the question to maintain that to mate with someone *specifically in order* to produce children with specific PPA irrelevant characteristics is legitimate.

### *Arguments of type B*

Whether or not it is possible to produce a valid argument of type A, arguments depending on contingencies are also available. I will cite just two examples.

- 1 Although the presumed permissibility of selecting against Z characteristics may not logically imply that PPAs with Z characteristics are of lower moral status than PPAs without them, imagine a child with Z characteristics who knows that its parents would have selected against these characteristics if



they had been able to do so. Imagine, further, that it is now possible *and accepted as legitimate* for the parents to select against Z characteristics. And suppose, as well, that the parents have now had another child whom they have ensured will not have Z characteristics after genetic diagnosis. Will this not be deeply damaging to the self esteem of the child with Z characteristics, in a way that the *PGC* will not permit? In addition, will not acceptance of the legitimacy of selection against Z characteristics tend to produce a sense of grievance in parents who, for whatever reason, are unable to avail themselves of new selection technologies against Z characteristics – thereby tending to cause (albeit irrational) resentment against those of their children with the offending Z characteristics, and thereby resulting in such children being treated with less *PGC* required respect than they would have been treated with had they not had these characteristics?

- 2 Z characteristics are, in themselves, neutral under the *PGC*, which is to say that no intrinsic rights benefit is to be gained by selecting for or against them. However, fashions can develop for such characteristics. Many such fashions are harmless in themselves. However, if they come to be regarded as conditions meriting medical intervention, they cease to be so. Witness the example of the desire for perfectly shaped teeth that has swept the United States, resulting in children whose parents are unable to afford the treatment that can correct ‘imperfections’ that are now perceived of as deformities, suffering deep traumas as a result. By extension, it may be argued that permitting selection against Z characteristics, even if this is (ex hypothesi) not intrinsically prohibited by the *PGC*, is likely to produce a culture in which the possession of *PGC* neutral characteristics becomes generically harmful to those who possess them.

Many at least *prima facie* plausible arguments of this kind can, I am sure, be produced. I would caution only that they point to a need for empirical research, which must be carried out if rational evaluation rather than dogma is our aim.

## Conclusion

Although all of this is very tentative, I suspect that no intrinsic argument against selection directed at PPA irrelevant characteristics can be constructed. Thus, the force of rights based arguments against such selection practices (whether in the context of PID or PD – or germline gene therapy for that matter) will necessarily be contingent, being of the form that such and such practices are likely to produce situations more generically harmful to PPAs than the absence of such practices.

On the other hand, on the basis of such arguments against selection practices that are directed at PPA irrelevant characteristics, the question of whether PID

is to be preferred to PD (assuming that, as a means to genetic selection, PD's involving killing a fetus, does not constitute an overriding objection against it) is a matter of whether or not PID is more likely than PD to promote such selection. And then, even if PID proves to be more problematic than PD on such grounds, PID will still only be the more problematic *all things considered* if, amongst other things, the eugenic advantages (as measured by the *PGC*) of PD over PID are greater than the advantages of the avoidance of abortion in relation to the disadvantages involved in the traumas of in vitro fertilisation.

All of this is very complex indeed. Apart from deep analysis of the weightings to be accorded various consequences by the *PGC*, much of such an assessment requires empirical research. Such analysis and research will, however, have to be performed if a fully reasoned *PGC* inspired analysis is to be provided.

## Notes

- 1 Simply because these are claim rights, which require the rights bearer to be able to waive their benefits, which presupposes that the rights bearer is a PPA.
- 2 The possession of some PPA irrelevant characteristics in their children (such as having cystic fibrosis, or Down's Syndrome) might (and does) place greater burdens on parents. As such, would be parents can claim that they have a right to select against these characteristics. Not to do so will interfere with their generic rights when they are not willing to bear these burdens. However, these burdens are contingent, in that they could be avoided or considerably lessened by a supportive state and culture. The *PGC* relevant negative consequences for the parents are not functions of their children possessing the PPA irrelevant characteristics alone.